

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Price Cap Regulation of)
Local Exchange Carriers)
)
Rate of Return Sharing)
and Lower Formula Adjustment)

CC Docket No. 93-179

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, American Telephone and Telegraph Company ("AT&T") hereby comments in support of the Commission's proposal that local exchange carriers ("LECs") subject to price cap regulation be required to adjust their current year's rate of return to reflect the effects of adjustments to the carriers' earnings in a prior year under the "backstop" mechanism of the LEC price cap plan.¹

The NPRM correctly concludes that the proposed revision is required to assure that the LECs' earnings computations are consistent with the methodology under rate of return regulation, on which the Commission's sharing and lower formula adjustment procedures are based. Moreover, the proposed modification is necessary to guarantee uniform treatment by price cap LECs of their

¹ Price Cap Regulation of Local Exchange Carriers (Rate of Return Sharing and Lower Formula Adjustment), CC Docket No. 93-179, Notice of Proposed Rulemaking, FCC 93-325, released July 6, 1993 ("NPRM")

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prior sharing and lower formula adjustments in reporting those carriers' current year earnings.




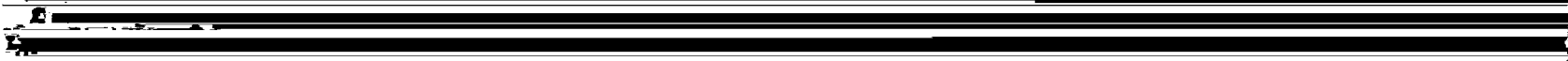


The NPRM (§ 1) points out that the Commission's price cap plan includes a "backstop" mechanism to adjust a LEC's price cap indices ("PCIs") to account for unanticipated deviations in that carrier's earnings from the industry average embodied in the price cap formula. Under this mechanism, a LEC that achieves earnings in excess of the prescribed rate of return in the base period may be required to share those excess earnings with ratepayers in the succeeding year, in the form of an exogenous adjustment to the LEC's price cap.² Additionally, to assure that price cap regulation does not subject any LEC to unduly low earnings over a prolonged period (thereby impairing service), the price cap plan permits a LEC that achieves base period earnings 1 percentage point below the prescribed rate of return to implement a temporary exogenous adjustment to its price caps to allow improvement in its earnings performance.

² See 47 C.F.R. § 61.45(d)(2). The sharing obligation begins at 1 or 2 percentage points above the authorized return (i.e., 11.25 percent), depending on the productivity offset selected by the LEC. Above this point, the LEC shares half of its earnings with access customers. At either 5 or 6 percentage points above the authorized earnings level (again, depending on the carrier's chosen productivity offset), all excess earnings are returned to ratepayers. See Policies and Rules concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd. 6786, 6801-02 (1990) ("LEC Price Cap Order") (§§ 126-127).

Pursuant to these backstop procedures, several LECs implemented sharing or lower formula adjustments in their annual 1992 access tariffs, based on those carriers earning levels for calendar year 1991. NPRM. ¶ 2. The

to understate the carriers' current sharing obligations by almost \$22 million.⁴

To resolve this issue, which was not addressed specifically in the LEC price cap plan, the Commission proposes to require all price cap LECs to adopt the "add back" procedure with respect to prior year backstop



overearnings (the counterpart of sharing under price cap regulation) is treated as an adjustment to the period in which those earnings were achieved, rather than to the year in which the refund is paid. This computation is implemented under rate of return by "adding back" the refund amount to the total return for the current period. Nothing in the LEC Price Cap Order indicates that the Commission intended to adopt sub silentio a different method for computing price cap LECs' annual earnings. Indeed, as the NPRM (§ 13) notes, the operation of the backstop mechanism would be seriously undermined unless the LECs' earnings are computed in the same manner as under rate of return, because it would effectively alter the earnings ranges prescribed in the LEC price cap plan for implementing sharing and lower formula adjustments .

Second, the Commission's proposal will produce crucially important uniformity in the manner in which the LECs' current earnings are computed for purposes of enforcing their sharing and low end adjustment obligations. As noted above, in the annual 1993 access tariff filings, many LECs failed to reflect their prior year's sharing amounts when calculating their earnings, while other LECs instead added back their past year's adjustments. AT&T has challenged the earnings computations of a number of these carriers, and the Commission is currently investigating the LECs' tariffs

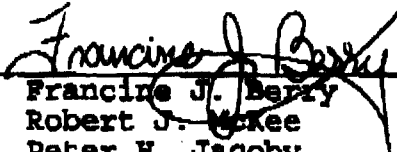
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WHEREFORE, for the reasons stated above, the Commission should adopt the NPEM's proposed "add back" procedure for computing base period earnings of price cap LECs.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By


Francine J. Berry
Robert J. McKee
Peter H. Jacoby

Its Attorneys

295 North Maple Avenue
Room 3244J1
Basking Ridge, New Jersey 07920

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